IN THE

Supreme Court of the United States.

OCTOBER TERM, 1911.

THE UNITED STATES, PETITIONER,
vs.
LEOPOLD BARUCH.
No. 190.

ON CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR THE RESPONDENT.

Statement.

The articles imported may be generally divided into two classes (1), the narrow goods, loom-woven goods, like Exhibits A and B (found by the Circuit Court of Appeals to be primarily articles of utility), that are bindings by ordinary meaning, by fabrication, and in use, as well as according to trade understanding, trade practice, and trade nomenclature, and (2), the broader goods, like Exhibit C (primarily articles of ornamentation), that are in the nature of trimmings.

The question for determination here is whether the A and B goods above referred to are dutiable as claimed by the respondents, and as held by the Circuit

Court of Appeals, under the specific and unlimited provision for bindings appearing for the first time in tariff legislation in paragraph 320 of the Tariff Act of 1897, which paragraph reads in full as follows :

> "Bandings, beltings, bindings, bone casings, cords, garters, lining for bicycle tires, ribbons, suspenders and braces, tapes, tubing and webs or webbing, any of the foregoing articles made of cotton or other vegetable fiber, whether composed in part of india-rubber or otherwise, and not embroidered by hand or machinery, forty-five per centum *ad valorem*; spindle banding, woven, braided or twisted lamp, stove, or candle wicking made of cotton or other vegetable fiber, ten cents per pound and fifteen per centum *ad valorem*; loom harness or healds made of cotton or other vegetable fiber or of which cotton or other vegetable fiber is the component material of chief value, fifty cents per pound and twenty-five per centum *ad valorem*; boot, shoe and corset lacings made of cotton or other vegetable fiber, twenty-five cents per pound and fifteen per centum *ad valorem*; labels, for garments or other articles composed of cotton or other vegetable fiber, fifty cents per pound and thirty per centum *ad valorem*";

or whether they are dutiable as held by the Board of General Appraisers and the Circuit Court under the provision for "trimmings, including braids * * * composed wholly or in chief value of flax, cotton, or other vegetable fibre, and not elsewhere specially pro-

vided for," as contained in paragraph 339 of that act, which reads as follows:

> Laces, lace window curtains, tidies, pillow shams, bed sets, insertings, flouncings, and other lace articles; handkerchiefs, napkins, wearing apparel, and other articles, made wholly or in part of lace, or in imitation of lace; nets or nettings, veils and veilings, etamines, vitrages, neck rufflings, ruchings, tuckings, flutings and quillings; embroideries and all trimmings, including braids, edgings, insertings, flouncings, galloons, gorings and bands; wearing apparel, handkerchiefs, and other articles or fabrics embroidered in any manner by hand or machinery, whether with a letter, monogram or otherwise; tamboured or appliqued articles, fabrics or wearing apparel; hemstitched or tucked flouncings or skirtings, and articles made wholly or in part of rufflings, tuckings, or ruchings; all of the foregoing, composed wholly or in chief value of flax, cotton or other vegetable fiber, and not elsewhere specially provided for in this Act, whether composed in part of india-rubber or otherwise, sixty per centum *ad valorem: Provided*, That no wearing apparel or other article or textile fabric, when embroidered by hand or machinery, shall pay duty at a less rate than that imposed in any schedule of this Act upon any embroideries of the materials of which such embroidery is composed.

The importer admits that 339 was the right paragraph for the broad articles represented by Exhibit

C, they being not elsewhere specially provided for in the Act, but insists that the narrow articles represented by Exhibits A and B fail to meet the description of "braids, not elsewhere specially provided for," in that they are specially provided for under the specific provision in paragraph 320 for cotton "bindings," which provision is unqualified and unrestricted.

It is apparent from the government's brief that the Assistant Attorney General is construing the statute as though it read the same as it did when the *Dieckerhoff* (54 Fed. Rep., 161) decision was rendered under the tariff act of 1890. The Circuit Court of Appeals was aware of the change in the statute and was aware that a different rule would apply if the statute remained the same. It said: "Had this question arisen under the tariff acts of 1890 or 1894, the situation would be entirely different." The statute has been changed since then in many ways, principally by the insertion of the word "bindings" in the tariff act of 1897, the one under consideration. This word must have some scope; in effect the government gives it none. Another fundamental error of the government's position lies in the premise that these articles are not commercially included within the term "bindings." If not included within the term "bindings," it is argued they cannot be "elsewhere specially provided for" and must remain where a commercial designation of "featherstitch braids," places them, to-wit, as "braids not elsewhere specially provided for." For the respondent it is asserted that an article may have a number of specific names such as featherstitch

binding, featherstitch braids, featherstitch tape, seam bindings, finishing binding, herringbone binding, finishing tapes, herringbone, feather stitching, webbing, herringbone webbing, seam tape, seam covering, and all be included in the class of articles known commercially as "bindings". The provision in the tariff law under consideration is not "featherstitch braids" or "featherstitch bindings," *eo nomine* provisions, like the "Bohea Tea" of *United States vs. Two Hundred Chests of Tea*, 9 *Wheat.*, 430, the "cotton bagging" case of *Curtis vs. Martin*, 3 How., 105, the "silk veil" case of *Arthur vs. Morrison*, 96 U. S., 108, the "gilling twine" case of *American Net & Twine Co. vs. Worthington*, 141 U. S., 468, the "furniture, finished" case of *Hedden vs. Richards*, 149 U. S., 346, or the "toys" case of *Cadwalader vs. Zeh*, 151 U. S., 171, cited in brief for United States, in which the terms construed all appeared in the law, but the provision is "*braids*" and "*bindings.*" The words "braids" and "bindings" are general terms, each of which includes a number of articles having various specific names. If then it appears by this record that these articles, known by these various specific names, are included within the class of articles known commercially as "bindings," the premise upon which the Government's position is founded is unwarranted, and the articles must be held to be "elsewhere specially provided for" than in paragraph 339 under the general term "braids," and therefore excluded from paragraph 339.

On the application for a writ of *certiorari*, it was

urged by the United States as one of the reasons why the writ should be allowed that decisions in different circuits were in conflict. This conflict is not now urged, so that the question of uniformity of decisions in different circuits is not before this Court. There has only been one decision by a circuit court of appeals upon the merits of this controversy, and that is the decision here to be reviewed.

ARGUMENT.

I.

The A and B goods are included in the class of articles known commercially as "bindings."

This proposition is to be determined by the test approved by this court in *DeJonge vs. Magone*, 159 U. S., 562, referred to on page 17, of brief for the United States. This case concerned the duty on certain "fancy paper" and this court, Mr. Justice (now Chief Justice) WHITE writing the opinion, approved the following charge to the jury:

> "Was this article, in the trade and commerce of this country, when Congress legislated in 1883, a variety of paper? In other words, if the committee of Congress that framed this act and reported it to Congress had turned to the trade and commerce of this country of 1883 and had asked that trade for a comprehensive list of all kinds of paper known to them and

> dealt in commercially as such, would paper like this have been included in such list? If the commerce of the country had furnished to the committee of Congress, in answer to such a request, a list of all the kinds of paper known to that trade, and if such list enumerated articles like, these, then they are covered by the phrase 'all other papers' in paragraph 392."

So here in the present case the question is not "What is the most general commercial name for these goods", but "Was this article in the trade and commerce of this country, when Congress legislated in 1897," a variety of "binding", just as the question in the *DeJonge* case was "Was the article in the trade and commerce of this country, when Congress legislated in 1883, a variety of paper", and not "Was its specific name," "morocco paper," "embossed paper," "imitation of velvet paper or what not?"

This is further emphasized by the case of *Drew vs. Grinnell*, 115 U. S., 477. There the tariff term in question was "silk laces." It appeared from the bill of exceptions that the merchandise was commercially known as "spot net" or "dotted net." Defendant offered proof to show "that the term 'silk laces' was not generally regarded, in trade and commerce, in the United States, among wholesale dealers in and importers of laces, as a commercial term, used to designate any particular article of trade, but was generally understood to include all laces which were made wholly or substantially of silk; that each particular lace had a particular trade name; that the goods

which were the subject of controversy in this suit were a particular kind of silk lace called 'spotted or dotted net'; that they were made upon lace machines; that in trade and commerce generally in the United States, laces were understood to be delicate, thin ornamental net work, the meshes of which were formed by plaiting together threads of silk, cotton or other material; and that the goods which were the subject of controversy in this suit corresponded with that definition."

This court said:

> "The jury were, in substance, told (1) that the plaintiffs were entitled to recover if the article was not a silk lace; (2) that it was a silk lace, if it was a lace of which silk was the component material of chief value, unless at the time the act was passed it was commercially known here as a different article; (3) that, if it was commercially known as 'spot net' or 'dotted net', it would fall under the 50 per cent. clause, but if it was so called as one of the varieties of silk lace, each of which had a particular distinguishing name, it was, nevertheless, a silk lace, within the meaning of the act."

And approved the charge to the jury.

So here, even if it were found that the term most generally applied to these goods is "featherstitch braids," that would not withdraw them from the provision for "bindings" so long as they were regarded in trade as a variety of bindings, any more than the

"spot net" designation in the *Grinnell* case excluded the merchandise from the term "silk lace".

This principle laid down many years ago, has been so repeatedly followed and sanctioned that it is absolutely settled law. It was last applied in *Loewenthal vs. United States*, 1 Court of Customs Appeals (T. D., 31592), wherein the court said:

> "We think a very good statement of the law is contained in the charge of LACOMBE, Judge, in *Sidenberg v. Robertson* (41 Fed. Rep., 763), from which we quote:
>
> The plaintiff has to cover with his trade evidence both descriptions of words—the words under which the laces are actually bought and sold, and also the word or words under which he claims that they are not known. Of course, if the particular word or phrase by which they were bought and sold were one of the phrases or words in the tariff act, as soon as he had proved that the articles were bought and sold, and known in commerce by that word or phrase, he would have proved his whole case. But where the particular word, the trade meaning of which he proves is not in the tariff act, and that instrument contains only general words, he must go further, and prove not merely that the articles are bought by one particular trade name, but that the general words used in the tariff act, which otherwise would cover them, do not cover them in trade and commerce."

Proof of commercial meaning to be at all effective must be addressed not simply to the commercial desig-

STEINHARDT (Rec., 36):

Q. Would a request for a complete line of samples of bindings and tapes, especially bindings, be complete without the inclusion of featherstitched goods, such as are represented by the Collective Exhibits A and B?

A. No, sir.

See, also, Rec., 177, 178, 179.

HILDER (Rec., 41):

Q. Would an order for bindings be complete without the inclusion of samples like the official exhibits?

A. It would not.

See, also, Rec., 42.

YANKAUER (Rec., 46):

Q. Would an order for binding in your trade, Mr. Yankauer, be complete without including articles like the official exhibits, not, however, referring to the Exhibit C?

A. No, it would not.

FARMER (Rec., 49):

Q. Would you say that the term binding would more narrowly describe the goods than any other term, more specifically?

A. I should think so.

VOM BAUR (Rec., 98):

Q. Do you consider as a merchant that it would have been at any time possible to com-

pletely fulfill the trade meaning of the term bindings without including these goods?

A. No.

STOCKUM (Gov., Rec., 101):

Q. What does that say?

A. The word on there says featherstitch braids but we don't buy these goods as featherstitch braids.

Q. How do you buy them?

A. Buy them as cotton binding.

Q. Do you order them that way?

A. We order them that way, buy them that way as such, and sell them as such.

Q. How are they invoiced to you?

A. As bindings.

KELLER (Gov., Rec., 106):

Q. Is it true they are usually sold and billed as featherstitch braids?

A. No.

Q. How are they usually known?

A. Well, they use in my experience with those goods all kinds of names—herringbone binding, seam binding, featherstitch braids, finishing braid, finishing tape, finishing binding—in fact, the three words are synonymous with this class of goods, tape, binding or braid."

HAGUE (Gov., Rec., 109, 110):

Q. The great bulk of your customers are manufacturers?

A. No, mostly, the wholesale jobbing trade.

Q. How do they order?

A. Under various designations.

Q. Which is the most general one that you know of?

A. Binding.

KRACHEHL (Gov., Rec., 117):

Q. Do you know of any term which describes the goods as specifically as featherstitch braids.

A. Yes, sir.

Q. What is that term?

A. Seam tape, featherstitch binding, seam covering.

BERG (Rec., 146):

Q. Referring to a period at and prior to 1897, please state the name or names by which that product was bought and sold in trade?

A. As long as I have been dealing in it they have been known as seam binding, principally covering up seams.

HORRAX (Rec., 151):

Q. By what names are they usually bought and sold, as I understand you to say?

A. Seam binding.

NEUBERGER (Rec., 154):

Q. Please state the name or names by which at and before 1897, that merchandise was

designated among merchants in the markets of this country?

A. Seam bindings, featherstitching, featherstitch bindings; half a dozen names I have heard.

Q. You have heard them called featherstitch braids, have you not?

A. I have.

WEILLER (Rec., 186):

Q. Now if a merchant were to ask for a list of the things which are bindings, could he make a complete list, adhering to the understanding of trade, without including these featherstitch braids under the list?

A. No.

See, also,

Ferguson, Rec., 87.
Ganong, Rec., 180.
Connell, Rec., 183.
Klemschmidt, Rec., 187.

Opposed to this testimony of commercial meaning of "bindings" the Government offered the testimony excerpts of which are set forth on pages 39, 40, 41 of its brief.

It is to be noticed that the testimony of six of these seven witnesses (Farrell, Wilson, Forsythe, Stern, Williams and Heaphy) is incompetent. They were all connected with retail New York dry goods stores, and could not therefore testify as to the understanding of the wholesale trade. Moreover, the record shows that by *wholesale* dry goods houses in New York City,

like H. B. Claflin Co. and Mills & Gibb, these articles were sold generally in and prior to 1897 under the name of bindings, or seam bindings, or herringbone bindings, as well as under the name featherstitch braid, and by *those* houses the term " bindings " was regarded either as equally specific and general with the term " featherstitch braid," or as more specific and more generally used than the latter term.

Krackehl, Rec., 181.
Connell, Rec., 183.
Ganong, Rec., 180.

It is not the usage of the retail trade which brings a provision within the rule of commercial designation, but it is the understanding of that trade which buys and sells at wholesale.

Morrison vs. Miller, 37 Fed. Rep., 82.
Stewart vs. United States (C. C. A.), 113 Fed. Rep., 928.

The Government justifies the competency of the department store witnesses upon the ground that although they were buyers for large retail concerns they bought at wholesale for the respective concerns (Appellant's Brief, pp. 38, 39). Upon the authorities cited we do not believe the testimony competent, but if it is, then by the same test the *testimony of the manufacturing consumers*, as a class, namely, the makers of undergarments, infant's clothing, caps, waists, etc., nine in number, who were called as witnesses in this case, who bought and used the goods in wholesale quantities, is also competent. Their

testimony is that they had always regarded them in their trade as bindings.

Seven of these nine manufacturers (namely, Gideon, Lewit, Alvis, Herman, Martin, Jacobs and Blaskopf) did not employ the term featherstitch braids in any portion of their testimony, and three of them did not recognize the merchandise at all under the name of featherstitch braids.

Gideon, who handled the goods since 1880, testified that herringbone, featherstitch, herringbone binding and featherstitch binding were the only names he had ever known them by (Rec., 38).

Lewit, who had used the articles in large quantities for many years, stated in effect that they were regarded in his trade as bindings and not as braids (Rec., 53, 54).

Alvis, with 24 years' experience, testified that an order for seam bindings or herringbone bindings would be filled by the delivery of goods of this character (Rec., 55).

The record points to the fact that "featherstitch braids" is a foreign term, first invented by foreign manufacturers (Rec., 106; Rec., 32; Rec., 33; Rec., 35; Rec., 41; Rec., 110).

Blaskopf alluded to the merchandise as braids or seam banding rather than bindings, but he referred to it also under the name of "seam binding" (Rec., 23), and testified that "finishing tapes" was a name just as generally employed as any of the others that he mentioned (Rec., 25). He contrasted plain bindings

with fancy bindings (Rec., 26). Nowhere in his testimony did he use the term featherstitch braid.

Sonn, in his answers, repeatedly referred to the merchandise as binding or herringbone binding (Rec., 29). He admitted some familiarity with the term featherstitch braid, but testified that the term binding would more aptly describe the goods, and that herringbone binding was the most common word used in this country, and that that was the original name (Rec., 28).

See, also,
Herman, Rec., 152.
Martin, Rec., 157.
Jacobs, Rec., 158.

Broadly speaking, three different trades or classes of dealers were represented by witnesses called by both sides to give testimony on the question of commercial designation, The witnesses, 35 in number, may be properly divided as follows:

7 Dry goods dealers, 6 of whom were retail dealers, and only one of whom was a dealer at wholesale;
19 Wholesale notion dealers, and
9 Wholesale manufacturing consumers, that is, those who used the articles in dispute in large quantities in the manufacture of children's underwear, caps, etc.

Of these 35 witnesses the government relied upon the testimony of the dealers of the first class mentioned above, to wit, the seven dry goods dealers, in support

of the exclusive featherstitch braid nomenclature. Of these seven dry goods dealers, six were in the retail business and, as we believe, were incompetent to testify. Opposed to these seven dry goods dealers is the overwhelming testimony of the nineteen wholesale notion dealers whose competency is beyond question, and the testimony of the nine wholesale manufacturing consumers, all of which evidence goes to the point of establishing conclusively that the merchandise was on and prior to July 24, 1897, known in different trades and in different parts of this country under various names, as seam bindings, featherstitch bindings, featherstitch braids, as well as by other names, and that no general, definite, and uniform designation was applied to it.

Furthermore, the evidence furnished by the nineteen importers of and wholesale dealers in notions (including Exhibits A and B), as hereinbefore indicated, establishes that the articles in suit, although called by these various specific names, were included in the class of goods known commercially under the general term *bindings*.

Further still the testimony of the manufacturing consumers as a class, namely, the makers of undergarments, infants' clothing, caps, waists, etc.—nine in number—who bought and used the goods in wholesale quantities, was to the like effect that they had always regarded them in their trade as bindings.

The Circuit Court of Appeals has found that these goods are bindings in fact (Rec., 197, 198). This record further establishes undeniably that they have

always been recognized commercially as bindings in the wholesale trades wherein they are handled most largely.

On page 22 of the Government's brief, some stress is laid upon the rule as laid down by this Court in *Arthur vs. Cumming*, 91 U. S., 362, 363, "that descriptive terms applied to articles of commerce shall be understood according to the acceptation given to them by commercial men in our own ports at the time of the passage of the act in which are found."

That this merchandise was not regarded in 1897 by domestic braid manufacturers as braids is indicated by the only petition concerning braids that was addressed to the Ways and Means Committee prior to the enactment of the law of July 24, 1897, to wit, the petition of "The Braid Manufacturers Association of the United States," which read in full as follows:

"NEW YORK, December 28, 1896.

"COMMITTEE ON WAYS AND MEANS:

"We, the Braid Manufacturers Association of the United States, respectfully represent to your honorable body the necessity for revision of the tariff affecting braids manufactured of cotton, Schedule I; silk, Schedule L; wool, Schedule K; metal, Schedule C; braid buttons, Schedule N.

"As yarns from our raw material in the manufacture of braids, a sufficient difference should exist between the rates of duty that are levied on our raw materials and THE FINISHED PRODUCT OF THE BRAIDING MACHINE. In order to have adequate protection on all our manufactures, it

would be necessary to have the rates on braids, in all above schedules, exceed those on yarns by not less than the rates levied on braids exceeded those on yarns in Schedule K of the tariff of 1890. We are in favor of a compound duty.

THE BRAID MANUFACTURERS' ASSOCIATION OF THE UNITED STATES."

Tariff Hearings before the Committee on Ways and Means—1896–7, page 1191.

Thus it appears that the only persons who asked for higher protection on braids at the time the tariff of 1897 was being framed (*i. e.*, the Braid Manufacturers' Association of the United States), did so with reference to braids generally, which they defined as "*the finished product of the braiding machine*," thus showing very clearly that they, at least, understood "braids" to be, and had in mind when they made their petition for higher duties, *a different class of goods entirely* from the merchandise in suit, to wit, articles made on braiding machines as distinguished from loom-woven articles or bindings with warp and weft threads.

II.

By ordinary meaning the goods are bindings.

The Government attacks the finding of fact made by the Circuit Court of Appeals that these articles are bindings and asserts the contrary, because Web-

ster, Worcester and Century Dictionary all limit "binding" to something that secures edges. The definitions of "binding" in these dictionaries, together with that of the Standard, are set forth on pp. 47, 48, of brief for United States.

For convenient reference, they are :

Webster :

> * * * ; something that secures the edge of cloth from raveling.

Worcester :

> Something that secures the edges of textile fabrics from raveling.

Century :

> * * * ; something that secures the edges of cloth or of a garment.

Standard :

> A braid or strip folded and sewed on the edge of any fabric or sewed over the place where two parts are joined, so as to protect and secure the parts covered by it.

That use is exactly the use of the goods in suit. Where two pieces of cloth are sewn together the edge of each piece of cloth protrudes beyond the point where they are stitched together ; these edges, in the nature of things, will unravel and present an unfinished condition. To prevent this raveling the merchandise, like A and B, is used to bind these edges, as the learned Judge at Circuit put it, "to cover and unite the raw edges" (Rec., p. 189) This is demonstrable on inspection of illustrative

Exhibits D, E, F, G, L, herein. In other words, the merchandise exactly meets all the definitions cited. The definition in the Standard dictionary is in more precise terms, but is not in conflict with the other definitions.

Another definition, not set forth in petitioner's brief, is from Spons' Encyclopædia of Industrial Arts, page 1762:

> "Bindings are kindred articles to braids, but usually of rather different texture; the two sides are not alike, the front having a diagonal or herringbone twill, while the back is plain."

This definition in exact terms describes the merchandise in controversy.

The Circuit Court of Appeals in the present case said:

> "But these featherstitch braids, being used for the purpose of binding seams, are, in our opinion, the kind of braids properly called bindings."

On the question of use see

Sonn, Rec., 27.
Weiller, Rec., 33.
Hilder, Rec., 41.
Yankauer, Rec., 45.
Lewit, Rec., 52.
Alvis, Rec., 58.
Miss Forsythe (Gov.), Rec., 71–72.
Williams (Gov.), Rec., 81.
Hague (Gov.), Rec., 108.
Horrax, Rec., 149.
Herman, Rec., 153–154.
Martin, Rec., 157.

The testimony of ten other witnesses on the subject of use, merely cumulative of the foregoing, is found at pages 20, 22, 38, 48, 87, 88, 144, 154, 181, 183, 187, of the Record.

To what articles or class of goods, then, can the provision for bindings be more appropriately applied than to the merchandise in suit, represented by collective Exhibits A and B?

III.

The rule of commercial designation.

We fully subscribe to the proposition so ably set forth under point II. of the government's brief:

> "It has long been a settled rule of interpretation that if words used in a statute imposing duties on imports had at the time of its passage a well-known signification in our trade and commerce, differing from the ordinary meaning, the commercial designation must prevail, unless Congress has clearly manifested a contrary intention; and it is only when no commercial usage is called for or proved that the common meaning is to be adopted."

Stated in another way, the ordinary meaning of a term used in the tariff law is to be taken, unless that word has in trade and commerce acquired some special signification. Tariff acts being addressed to trade and commerce, Congress uses terms in a commercial

sense, unless it appears from the context that it did not so intend. But we must supplement counsel's exposition of the rule by the statement that the commercial meaning of a term in a tariff law must be definite, uniform and general, and not partial, local or personal.

Maddock vs. Magone, 152 U. S., 368, 371.
Berbecker vs. Robertson, 152 U. S., 373, 376.
Sonn vs. Magone, 159 U. S., 417, 421.
Patton vs. United States, 159 U. S., 500, 506.

The reason for this is manifest, because Congress legislates with respect to the entire country, not specially for the east or the west, or the south, or the north. Therefore if commercial meaning, differing from ordinary meaning, is to attach to a term used in a tariff law, it must be a meaning or understanding that is uniform throughout the United States.

The only witnesses in this entire record who represented or purchased merchandise for dry goods concerns *outside of New York*, to wit, for concerns in the South and West, agreed that in those sections the merchandise was generally termed and purchased by their houses under the name of seam bindings or featherstitch bindings.

Ferguson, Rec., 87, 88, 92, 93.
Fantl, Rec., 61.

If the commercial meaning prevailing in the north or east were to attach to a tariff term against that prevailing

in the south and west, it is clear that different interpretations would result, dependent upon trade customs in different sections of the country, or nomenclature in the particular section. To meet such situation this court qualified the commercial designation rule and requires that the general name must be uniform throughout the country before the rule applies.

The theory upon which this case was decided by the Circuit Court of Appeals, and the language employed by that tribunal show clearly that the Court did not deem any detailed or minute examination of the record or weighing of the evidence necessary, to determine the validity of our contention that these articles were bindings commercially as well as in fact, and that they were generally known as bindings in the wholesale trades in this country.

The Board of General Appraisers and the Circuit Court merely found that these articles were "generally known" as featherstitch braids. Neither of those tribunals nor the Circuit Court of Appeals made any finding of fact that these goods were uniformly known as featherstitch braids. Indeed, the record would not warrant such a finding.

Therefore, the citations concerning concurring decisions of two courts upon a question of fact (page 36, appellant's brief) are not in point.

At this point, parenthetically, it may be noted that in the General Appraiser's summary of the testimony, as set forth in the Board's opinion (Rec., 9–18), there were most unfortunate omissions.

Thus, from Krackehl, the Board quoted:

> Q. Do you know of any term which describes these goods more specifically than the term featherstitch braids? A. No, sir; I do not.
>
> Q. Now has the commercial designation or designations of this article (Exhibit G) changed during the time you have been familiar with it? A. No, sir; not that I know of.

The Board omitted to quote:

> Q. Do you know of any term which describes the goods as specifically as featherstitch braids?
>
> A. Yes, sir.
>
> Q. What is that term?
>
> A. Seam tape, featherstitch bindings, seam covering.

The Board further omitted to quote the following excerpts which materially change the effect of the excerpts quoted by Board.

Stockum, Rec., 101:

> Q. Do you undertake to say that the term bindings is more frequently used in your invoices than featherstitch braids? A. Yes, sir.
>
> Q. That is true, is it? A. Yes, sir.

Keller, Rec., 106:

> Q. Is it true that they are usually sold and billed as featherstitch braids? A. No.
>
> Q. How are they usually known? A. Well, they use in my experience with those goods, all kinds of names, herringbone binding,

seam binding, featherstitch braids, finishing braid, finishing tape, finishing binding—in fact the three words are synonymous with this class of goods, tape, binding, or braid.

HAGUE, Rec., 109–110:

Q. How do they order?
A. Under various designations.
Q. Which is the most general one that you know of?
A. Binding.

As indicated under Point I. the cases cited in the brief for the United States were cases where the proof of commercial designation was directed to the words or terms used in the tariff act, such as "cotton bagging," "Bohea tea," silk veils," "furniture, finished," "gilling twine," etc. The term "featherstitch braids" does not appear in the tariff act in question. The reason for the rule of commercial designation as enunciated in all cases cited by Government is that Congress in using terms in a tariff act uses them in their commercial signification. This rule manifestly cannot be invoked to apply to a term not in the statute, for the reason that Congress did not use that term.

The language in paragraph 339 is descriptive, and not commercial. Under the decisions of this Court, the doctrine of commercial designation, therefore, in the present instance is not of primary importance.

In *Barber vs. Schell*, 107 U. S., 617, certain laces and insertings composed wholly of cotton were in-

volved. Mr. Justice BLATCHFORD, speaking for this Court, said (p. 621):

> "The designations qualified by the words 'cotton,' in the act of 1846, are designations of articles by special description, as contradistinguished from designations by a commercial name or a name of trade. They are designations of quality and material. * * * This was the view applied by Mr. Justice NELSON in *Reimer vs. Schell*, 4 Blatchf., 328, in 1859, to colored cotton hosiery, under the provisions in question, and we think it a sound one. It was the view adopted by the Circuit Court in this case. There is no question of commercial designation. Hence, the cases cited and relied on by the importers are not in their favor."

Thereupon the Court proceeded to distinguish numerous cases, notably *Arthur vs. Lahey*, 96 U. S., 112, cited by the learned Assistant Attorney General on page 29 of his brief.

Furthermore the reasoning of this Court in *United States vs. Klumpp*, 169 U. S., 209, 216, shows conclusively that the case of *Arthur vs. Lahey* is not in point.

The question in the *Klumpp* case was whether certain worsted dress goods were or were not affected by a provision for a reduction in duties on manufactures of wool, and Mr. Chief Justice FULLER delivering the opinion of the Court, in holding that they were, said:

> "It will be perceived that the Acts of 1890 and 1894 did not levy duty on 'worsted dress

goods' *eo nomine*, nor on worsted dress goods by commercial designation, nor on worsted dress goods as distinguished from woolen dress goods; but a duty on dress goods, whether made of 'wool, worsted, the hair of the camel, goat, alpaca or other animals'. The description is addressed to the quality and material of the goods, namely, women's and children's dress goods, made of wool, worsted, etc.

"The principle then that the special designation of an article by its commercial meaning should prevail over general terms used in the same or a later act, has no application."

In *Schiff vs. United States*, 99 Fed. Rep., 555 (C. C. A., Second Circuit), it was said with reference to a provision for braids . . . composed of straw, etc.:

"We have here no question of commercial designation. The tariff act does not lay duty upon 'straw braid'—a term which might have a definite meaning in trade and commerce—but upon 'braids composed of straw,' etc., and there is no evidence that the words 'straw,' 'chip,' or 'grass,' when applied to the raw material, have any peculiar commercial meaning."

99 Fed. Rep., p. 557.

So, here, Congress has not designated this merchandise by any specific name, such as featherstitch bindings, or seam bindings or featherstitch braids, but has inserted a broad descriptive provision in paragraph 339

to include such braids composed wholly or chiefly of cotton, flax, or jute as were not elsewhere specially provided for in the Act.

IV.

Congress in transferring the unqualified provisions for "braids" from the notions paragraph (263) of the Act of 1894 to the trimmings paragraph (339) of the Act of 1897, making it read "trimmings, including braids," and further restricting its operation by adding the clause "not elsewhere specially provided for," and at the same time inserting a provision for the first time in tariff legislation for "bindings * * * of cotton" without words of qualification or restriction, clearly expressed its intention to limit the high tax of 60 per cent. to such braids as were not bindings.

Congress provided for cotton bindings for the first time in the law of 1897. What did it have in mind? We turn to a decision of the Board of General Appraisers rendered more than two years prior to the passage of the Act of 1897, to wit, on January 7, 1895, known as G. A. 2850, on a protest of C. M. Vom Baur, the appellant in *Vom Baur vs. U. S.*, 141 Fed., 139, wherein the Board said:

> "The merchandise here is cotton braid, known as 'seam bindings,' . . . that it is used for seam binding; that it is similar to a feather-stitch braid."

And Congress recognized this distinction, because in enacting the law of 1897, it struck out the word "braids" from the notions paragraph (320), and substituted in its place the word "bindings," and then carried over the word "braids" to the "trimmings" paragraph (339), but said "trimmings, including braids, * * * not elsewhere specially provided for."

This gives force to the logic of the dissenting Judge in *Hiller vs. United States*, 106 Fed. Rep., 73, cited on page 45, appellant's brief, "that Congress intended by paragraph 339 of 1897 to cover only such braids as are trimmings." This construction of the law makes the related parts of it entirely harmonious and consistent. It is to be noted, moreover, that whilst the divided Court reached its conclusion in this case upon the theory that the word "including" in paragraph 339 was by way of addition, not by way of specification, the same Court unanimously held in a later decision (*Goldenberg vs. United States*, 130 Fed. Rep., 108) in effect that the same word similarly appearing in paragraph 314 of the same act was by way of specification and not by way of addition.

See, also:

In re Johnson, 56 Fed. Rep., 822.
Claflin vs. United States, 78 Fed. Rep., 805, and
In re John Hope, 100 Fed. Rep., 286,

wherein the word "including" was construed in accordance with its evident meaning in 339.

In this connection it is most important to note and

to have clearly in mind the general scope of paragraph 339 as compared with the general scope of paragraph 320. Paragraph 339 is distinctively the vegetable fiber trimmings paragraph of the Dingley law, providing as it does for insertings, flouncings, nettings, rufflings, ruchings, tuckings, galloons, laces, embroideries, trimmings, etc., the primary or main purpose of which is for the embellishment or ornamentation of dresses or outside garments, which group of articles is handled, broadly speaking, by dealers in trimmings, as distinguished from dealers in notions or small wares; whereas paragraph 320, on the other hand, is distinctively the vegetable fibre notions paragraph of the Dingley law, providing as it does for bandings, beltings, bindings, bonecasings, cords, ribbons, tapes, webbing, etc., all of which are primarily or mainly articles of utility, and handled by dealers in notions and small wares. And in this connection it should be noted that there is substantial agreement among the witnesses that these goods are for the most part carried, not in braid or trimming departments, but in notion departments.

As the Court below very pertinently said in its opinion :

> "The question is, not whether the articles are braids, but whether they are braids not elsewhere provided for in the act. * * * But these feather-stitch braids, being used for the purpose of binding seams, are, in our opinion, the kind of braids properly called bindings. And we think that it may fairly be assumed that, when

> Congress inserted the word ' bindings ' in the ' notions ' paragraph and transferred the word ' braid ' to the ' trimmings ' paragraph with words of qualification it intended to embrace in the latter paragraph only such braids as were not bindings. If the articles are bindings, as well as braids, the provision in the ' notions ' paragraph is the more specific. Bindings are embraced without the words of restriction or qualification. These articles as bindings are necessarily included, and they are specially provided for elsewhere than in paragraph 339."

Our learned adversary seeks to support his contention by pointing to the Tariff Act of 1909 (Brief, p. 10). But clearly any inference to be drawn from this subsequent legislation cannot aid the government. Where an act repeals or replaces an existing law, changes of language must be construed to indicate change of intent. And so the Circuit Court of Appeals for the Second Circuit in the case at bar held, when, in tracing the development of legislation, it pointed to the significant transfer of the provision for braids from the " notions " paragraph of the law of 1894 to the " trimmings " paragraph of the law of 1897, which is restricted by words of qualification and also to the appearance for the first time of the provision for bindings without words of restriction and qualification in the " notions " paragraph of the law of 1897. In the further development of legislation marked change of language accompanied by much transposition is found in the law of 1909, which is

consistent only with still further change of intent. What change of intent?

Paragraph 349 of the new law is as follows:

> "(349). Laces, lace window curtains and all other lace articles; handkerchiefs, napkins, wearing apparel and all other articles made wholly or in part of lace or laces, or in imitation of lace; nets, nettings, veils, veilings, neck rufflings, ruchings, tuckings, flutings, quillings, embroideries, trimmings, braids, featherstitch braids, edgings, insertings, flouncings, galloons, gorings, bands, bandings, belts, beltings, bindings, cords, ornaments, ribbons, tapes, webs and webbings; wearing apparel, handkerchiefs and other articles or fabrics embroidered in any manner by hand or machinery, whether with a plain or fancy letter, initial, or monogram, or otherwise, or tamboured, appliqueed, or scalloped, by hand or machinery, for any purpose, or from which threads have been drawn, cut or punched to produce openwork, ornamented or embroidered in any manner herein described, in any part thereof, however small; hemstitched or tucked flouncings or skirtings; all of the foregoing, composed wholly or in chief value of cotton, flax or other vegetable fiber, or of cotton, flax or other vegetable fiber and india rubber, or of cotton, flax or other vegetable fiber, india rubber and metal, and not elsewhere specially provided for in this section, sixty per centum *ad valorem:* Provided, That no article composed wholly or in chief value of one or more of the materials or goods specified in this paragraph shall pay a less rate of duty

than the highest rate imposed by this section upon any of the materials or goods of which the same is composed.

AND PROVIDED FURTHER, That no article or fabric of any description, composed of flax or other vegetable fiber, or of which these materials or any of them is the component material of chief value, when embroidered by hand or machinery, or having hand or machinery embroidery thereon, shall pay a less rate of duty than that imposed in this section upon any embroideries of the materials of which such embroidery is composed."

Plainly the "notions" paragraph of the law of 1897 has been virtually merged and incorporated into paragraph 349 of the present law, which is *in pari materia* with paragraph 339 of the old law. The "notions" paragraph of the law of 1909 (330) has been much emasculated. Surely this was not inadvertent. It is a fair inference that Congress, presumably, aware that the two paragraphs 320 and 339 of the law of 1897 had been much in conflict and productive of much litigation, sought to avoid this in future, and in seeking to effect this purpose it recognized that the provision for braids was not sufficiently specific or comprehensive and, therefore, inserted the provision for featherstitch braids.

This term "featherstitch braids," as the record shows, is loosely employed. Besides being one of the terms applied to the narrow woven articles here in controversy shown in Exhibits A and B, it is also used to designate the very unlike wide articles shown in

Exhibit C, which are manifestly solely ornamental in character and, as such, braids concededly within the scope of the "trimmings" paragraph 339. But whatever the legislative intent evinced by the use of the term "featherstitch braids" in the new law, it is clear that Congress could not fail to recognize that the term "bindings" was potential in connection with the narrow articles as shown by Exhibits A and B here in controversy, for such was the state of the law when the Act of August 5th, 1909, was passed as declared the preceding spring by the Circuit Court of Appeals for the 2nd Circuit.

The Assistant Attorney-General would appear to concede that the narrow articles in controversy are *seam* bindings, but he appears to think that "'*seam* bindings should not be taken for bindings'" and that "the two terms stand for different things" (Brief, p. 43). If such an argument has any validity, what becomes of his contention that featherstitch braids are braids?

Our learned adversary further advances the argument that the articles in controversy cannot be both braids and bindings *for tariff purposes*, and that *for tariff purposes* braids and bindings are independent enumerations. (Brief, 46 and 10). The record establishes conclusively that in trade usage the terms braids and bindings are overlapping terms, but it may be safely conceded that *for tariff purposes* they each have an independent and separate scope. Such indeed is the respondent's contention. Numerous instances may be cited where the language of more

than one paragraph in fact applies to the same article. The question then is, which paragraph is applicable in the tariff sense? Thus in *Goldenberg vs. United States*, 130 Fed. Rep., 108, the Circuit Court of Appeals Second Circuit held that the provision for "wearing apparel * * * made wholly or in part of lace" applied to lace neckwear rather than the provisions for "article of wearing apparel of every description including neckties and neckwear," the provisions for neckwear in the latter paragraph being rather by way of specification than by way of extending the scope of the paragraph.

In *United States vs. Siegle*, 1 Ct. Cust. App., 32, T. D. 31,005, it was held that certain bronze lakes and scarlet lakes were dutiable as "colors * * * containing lead" without any words of limitation or qualification rather than as "lakes not otherwise specially provided for." In other words, the lakes were held to be otherwise provided for as colors containing lead.

It is proper to note that the Assistant Attorney-General is in error on page 1 of his brief in stating the articles in question have embroidery on them. They have not (Rec., p. 88).

These goods are woven on the loom and made complete in one process.

Vom Baur, Rec., 188.
Horrax, Rec., 150.

They cannot be embroidered because "embroidery is always work added to the completed fabric by means of a needle."

Standard Dictionary.

As found by the Circuit Court of Appeals these articles "are primarily articles of utility, not inappropriately designated in the brief of the importers as 'notions'". It is true that they are more fancy than a plain binding, but that does not change their primary utilitarian character. There are fancy tapes, fancy bindings, fancy beltings and other fancy articles named in the "notion" paragraph 320, as well as the plain varieties, but the principal or primary use of each is that of utility as opposed to ornamentation.

Treasury decisions 6710, 18234, 18951, 24170.
Hyman, Rec., 144.
Horrax, Rec., 150.

The soundness of the doctrine that a provision which is absolute and exclusive in its phraseology is of a superior governing force to one qualified by the phrase "not elsewhere specifically provided for" has been repeatedly recognized by this Court.

Barber vs. Schell, 107 U. S., 617, 520.
Hartranft vs. Meyer, 135 U. S., 237.
Arthur's Ex'rs. vs. Vietor, 127 U. S., 572.

The argument of the government on page 22 of its brief that the words of limitation "not elsewhere specially provided for" should be applied only to some of the articles named in paragraph 339 is answered by reference to the statute itself which reads: "all of the foregoing, composed," etc., and by the case of *Arthur vs. Butterfield*, 125 U. S., 70, 76.

The transfer of the word "braids" to the trimmings paragraph was concurrent with the insertion of the word "bindings" in the law.

We print herewith, as an appendix to this brief, the unanimous opinion of the Circuit Court of Appeals, which is so clear and convincing that this case needs no further argument.

It is respectfully submitted that the judgment of the court below should be affirmed.

WADE H. ELLIS,
JOHN A. KRATZ, JR.,
Attorneys for Respondent.

October, 1911.

Appendix.

Act of 1890.	Act of 1894.	Act of 1897.
354. Cotton cords, braids, boot, shoe and corset lacings, thirty-five cents per pound; cotton gimps, galloons, webbing, goring, suspenders and braces, and of the foregoing which are elastic or non-elastic, forty per centum ad valorem: Provided that none of the articles included in this paragraph shall pay a less rate of duty than forty per centum ad valorem.	263. Cords, braids, boot, shoe and corset lacings, tapes, gimps, galloons, webbing goring, suspenders and braces, woven, braided or twisted lamp or candle wicking, lining for bicycle tires, spindle binding, any of the above made of cotton or other vegetable fiber and whether composed in part of India rubber or otherwise, forty-five per centum ad valorem.	320. Bandings, beltings, bindings, bone casings, cords, garters, lining for bicycle tires, ribbons, suspenders and braces, tapes, tubing and webs or webbing, any of the foregoing articles made of cotton or other vegetable fiber, whether composed of in part of india-rubber or otherwise, and not embroidered by hand or machinery, forty-five per centum ad valorem; spindle banding, woven, braided or twisted lamp, stove or candle wicking made of cotton or other vegetable fiber, ten cents per pound and fifteen per centum ad valorem; loom harness or healds made of cotton or other vegetable fiber, or of which cotton or other vegetable fiber is the component material of chief value, fifty cents per pound and twenty-five per centum ad valorem; boot, shoe, and corset lacing made of cotton or other vegetable fiber, twenty-five cents per pound and fifteen per centum ad valorem; labels, for garments or other articles composed of cotton or other vegetable fiber, fifty cents per pound and thirty per centum ad valorem.
373. Laces, edgings, embroideries, insertings, neck rufflings, ruchings, trimmings, tuckings, lace window curtains, and other similar tamboured articles, and articles embroidered by hand or machinery embroidered and hemstitched handkerchiefs, and article made wholly or in part of	276. Laces, edgings, nettings and veilings, embroideries, insertings, neck rufflings, ruchings, trimmings, tuckings, lace window curtains, tamboured articles, and articles embroidered by hand or machinery, embroidered handkerchiefs, and articles made wholly or in part of lace, ruf-	339. Laces, lace window curtains, tidies, pillow shams, bed sets, insertings, flouncings and other lace articles; handkerchiefs, napkins, wearing apparel, and other articles, made wholly or in part of lace, or in imitation of lace; nets or nettings, veils and veilings, etamines, vitrages, neck

lace, rufflings, tuckings, or ruching, all of the above-named articles, composed of flax, jute, cotton or other vegetabel fiber or of which these substances or either of them or a mixture of any of them is the component material of chief value, not specially provided for in this act, sixty per centum ad valorem: Provided, that articles of wearing apparel, and textile fabrics, when embroidered by hand or machinery, and whether specially or otherwise provided for in this act, shall not pay a less rate of duty than that fixed by the respective paragraphs and schedules of this act upon embroideries of the materials of which they are respectively composed.	flings, tuckings, or ruchings, all of the above-named articles, composed of flax, jute, cotton, or other vegetable fiber, or of which these substances or either of them, or a mixture of any of them, is the component material of chief value, not specially provided for in this act, fifty per centum ad valorem.	rufflings, ruchings, tuckings, flutings, and quiltings; embroideries and all trimmings, including braids, edgings, insertings, flouncings, galloons, gorings and bands; wearing apparel, handkerchiefs, and other articles or fabrics embroidered in any manner by hand or machinery, whether with a letter monogram or otherwise; tamboured or appliqued articles, fabrics or wearing apparel; hemstitched or tucked flouncings or skirtings, and articles made wholly or in part of rufflings, tuckings or ruchings, all of the foregoing, composed wholly or in chief value of flax, cotton, or other vegetable fiber and not elsewhere specially provided for in this act, whether composed in part of india-rubber or otherwise, sixty per centum ad valorem: Provided that no wearing apparel or other article or textile fabric, when embroidered by hand or machinery, shall pay duty at a less rate than that imposed in any schedule of this act upon any embroideries of the materials of which embroidery is composed.

Bindings appeared for the first time in the act of 1897, when they were inserted in paragraph 320. Braids at the same time were inserted in paragraph 339. In the provisions of the act of 1890 and 1894 the word "braid" appeared without words of limitation. In paragraph 339 it is followed by the restriction "not elsewhere specially provided for in this act." The articles in the paragraphs at the head of the parallel column (paragraph 354 of the act of 1890; paragraph 263 of the act of 1894, and paragraph 320

of the act of 1897) are primarily articles of utility, not inappropriately designated in the brief of the importer as "notions." The other paragraphs embrace articles which are primarily for the purpose of ornamentation.

Before LACOMBE, WARD and NOYES, Circuit Judges.

NOYES, Circuit Judge (after stating the facts as above). The merchandise in question consists of narrow woven strips bearing "featherstitch" or "herringbone" ornamentation. Their practical use is to cover seams. They are inexpensive, and are largely used in making infants' clothing and underwear. The featherstitch ornamentation improves the appearance of the garment, and is added for that purpose. But the primary purpose of the article is one of utility.

This article has borne various names, such as "seam binding," "featherstitch binding," "featherstitch tape," etc.; but the name by which it has usually been called is "featherstitch braid." Indeed, while the article is not braided, but woven, we should have little difficulty in adopting the conclusion of the Circuit Court and of the Board of Appraisers that prior to 1897 it was generally commercially designated as "featherstitch braid." But this is not a case in which the finding of a commercial designation carries us far. The question is, not whether the articles are braids, but whether they are braids not elsewhere specially provided for in the act. Manifestly commercial designation can have no bearing upon the latter inquiry. It cannot be said that the phrase "braids not otherwise specially provided for"

had any commercial meaning—different from the common understanding—including this merchandise. The articles may be called "featherstitch braids"; but, if some braids are bindings, it is not inconsistent with the commercial designation to assess them under the binding paragraph.

Had this question arisen under the tariff acts of 1890 or 1894, the situation would be entirely different. As we have seen, the word "braid" was used in those acts without words of limitation or qualification. If in a case under either of those acts it had been shown that an article was commercially known as a "braid," it would have necessarily brought it within the statute. But an article is not necessarily brought within paragraph 339 by showing that it is a braid. It may be a braid without question—may have been made upon a braiding machine; but if it is more specially provided for elsewhere, it is not included. Accepting the commercial designation of these articles as featherstitch braids, we only reach the conclusion that they should be classified under paragraph 339 if they are not more specifically provided for elsewhere.

Now, the following definition of the word "binding" appears in the Standard Dictionary:

> "A braid or strip folded and sewed on the edge of any fabric, or sewed over the place where two parts are joined, so as to protect and secure the parts covered by it."

It thus appears that a binding may be a braid used or adapted to be used for a particular useful purpose.

Many kinds of braid are not adapted to this use. They are employed for ornamental purposes solely. Braids of this character should be classified under paragraph 339. And, as we have seen, this classification would be especially appropriate, as that paragraph and those corresponding to it in the earlier acts have always applied particularly to articles of ornamentation. But these featherstitch braids, being used for the purpose of binding seams, are in our opinion, the kind of braids properly called bindings. And we think that it may fairly be assumed that, when Congress inserted the word "bindings" in the "notions" paragraph and transferred the word "braid" to the "trimmings" paragraph with words of qualification, it intended to embrace in the latter paragraph only such braids as were not bindings. If the articles are bindings, as well as braids, the provision in the "notions" paragraph is the more specific. Bindings are embraced without the words of restriction or qualification. These articles as bindings are necessarily included, and they are specially provided for elsewhere than in paragraph 339.

This discussion of the case upon principle leads us to the conclusion that the merchandise should have been assessed for duty as bindings under paragraph 320; and we reach no different result from an examination of other cases, although the question of the classification of this merchandise has been before the courts several times and conflicting decisions have been rendered. In the case of *In re* Dieckerhoff (C. C.), 54 Fed., 161, it was held that these articles

were dutiable as cotton braids under the section of the act of 1890 first quoted, and not as cotton trimmings under the second section quoted. This decision, however, has no special bearing upon the question now under consideration because, as we have seen, bindings were not provided for in the act of 1890. Featherstitch braids may well not be trimmings within the ornamental article paragraph of the earlier act and yet be bindings within the useful article paragraph of the act of 1896.

The government, however, insists that in view of the Dieckerhoff decision it must be presumed that, when Congress used the word "braids" in the act of 1897, it intended that it should apply to featherstitch braids. As just pointed out, however, all that that case held was that the article were braids and not trimmings. It did not hold that they were not bindings. And Congress used the word "braid" only with words of qualification. We see no force in the contention. Aside from the Dieckerhoff decision under the act of 1890 the question here presented has been decided both ways by the Circuit Court. In Steinhart vs. United States (C. C.), 121 Fed., 442, it was held that the articles, if braids, were bindings also, and therefore dutiable under paragraph 320. This decision was followed in The Hague Case which does not appear in the "Federal Reporter." In the case of Von Baur vs. United States (C. C.), 141 Fed., 439, the question was again presented and decided the other way. The opinion of the board holding

that the articles were braids under paragraph 339 was affirmed without opinion by the Circuit Court. We find the reasoning in the Steinhart decision persuasive, and, for reasons already stated, fail to find that the additional evidence requires any different conclusion.

The decision of the Circuit Court is reversed.

172 Fed. Rep., 342.